

Briefing to U.S. Congress House of Representative

Committee on Energy and Commerce

Florida's Response: Regulation and Oversight of Drug Treatment Facilities

- 1. How many drug treatment facilities are within the state of Florida? Please provide a description of what type of facility is considered a drug treatment facility in your state.**

The Department of Children and Families (Department) is recognized as the single state authority for substance abuse and mental health services, and is statutorily responsible for licensing substance abuse service components in Florida, not facilities. Licensure functions are implemented by Department staff in six regions of the state.

There are currently 1,586 licensed substance abuse treatment facilities in the State of Florida. A substance abuse service provider is a public agency, private for-profit or not-for-profit agency under this chapter, a physician or any other private practitioner licensed under this chapter, or a hospital that offers substance abuse services through one or more licensed service components defined in section 397.311(26), Florida Statutes. Please see Attachment I for list of licensable service components.

- a. Please provide a breakdown between inpatient treatment facilities and outpatient treatment facilities.**

As defined in s.s.397.311(42), F.S., a "service component" or "component" means a discrete operational entity within a service provider which is subject to licensing as defined by rule. Service components include prevention, intervention, and clinical treatment. A drug treatment facility may hold more than one license if they provide several service components. The type of licensed service component would determine if they are an inpatient or outpatient treatment facility. Please see Attachment I for a list of licensable service components

- 2. Does your state require that drug treatment facilities be licensed or certified?**

Yes, pursuant to s.397.401, F.S. any program holding themselves out to the public as a substance abuse service provider must be licensed by Department.

- a. What licensure, certification, standards, and requirements are applicable?**

Chapter 397, F.S., and Ch.65D-30, Florida Administrative Code, establish the licensure standards for substance abuse treatment services.

- b. By whom or what entity must they be licensed or certified?**

They must be licensed by the Department. Pursuant to s.397.4012, F.S., any person or entity providing substance abuse treatment services must be licensed by the Department unless exempt from licensure.

- c. Are treatment facilities within your state required to be re-licensed or re-certified? If so, how often are they required to seek re-licensure or re-certification?**

Providers must apply annually to maintain licensure.

d. How many, or what percentage, of the facilities within your state are licensed or certified, and how many are not?

Pursuant to s.397.401, F.S., it is unlawful for any person or agency to act as a substance abuse service provider unless it is licensed or exempt from licensure. As previously stated - there are 1,586 treatment facilities in the state of Florida.

3. Does your state require that physicians or other providers who work within these drug treatment facilities be licensed or certified?

Ch. 65D-30, F.A.C., requires a qualified professional be on staff for all substance abuse components.

a. If so, what licenses or certifications must they hold?

Section 397.311(34), F.S., defines a qualified professional as a physician or a physician assistant licensed under chapter 458 (Medical Practice) or chapter 459 (Osteopathic Medicine); a professional licensed under chapter 490 (Psychological Services) or chapter 491 (Clinical, Counseling, and Psychotherapy Services); an advanced registered nurse practitioner licensed under part I of chapter 464; or a person who is certified through a department-recognized certification process for substance abuse treatment services (Certified Addiction Professional) and who holds, at a minimum, a bachelor's degree. In addition, Ch. 65D-30, F.A.C., requires designation of a medical director for addictions receiving facilities, detoxification, intensive inpatient treatment, residential treatment, and medication and methadone maintenance treatment. Ch. 65D-30.002(37), F.A.C., defines medical director as a physician licensed under Chapter 458 or 459, F.S., who has been designated to oversee all medical services of a provider and has been given the authority and responsibility for medical care delivered by a provider. Ch. 65D-30, F.A.C., requires a qualified professional be on staff for all substance abuse components.

Pursuant to s. 397.4012, F.S., professionals who hold a professional license (physician or physician assistant licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, a psychotherapist licensed under chapter 491, or an advanced registered nurse practitioner licensed under part I of chapter 464) are exempt from licensure.

4. Does your state require drug treatment facilities to seek accreditation?

Yes. House Bill 807 (HB 807) passed the Florida Legislature in July 2017 which mandates accreditation for clinical treatment components. The Department is in the process of rulemaking to implement these provisions.

5. Outside of the licensure and certification process, do you conduct additional oversight and regulation of drug treatment facilities? Please explain.

The Department conducts investigations of complaints of licensed providers and allegations of unlicensed substance abuse activities.

6. Does your state conduct inspections or rely on third party inspections of drug treatment facilities?

The Department conducts its own monitoring of substance abuse treatment services and investigates allegations of unlicensed substance abuse providers. The Department may work in collaboration with other state or local authorities, as appropriate if/when issues fall outside the Department's purview.

a. If so, how often are these facilities inspected?

Unless the provider is accredited, the Department conducts annual onsite inspections. If accredited, the Department conducts inspections every 3 years as directed in ss. 394.741(4), F.S.

b. Of the treatment facilities that your state has inspected, how often are there citations or adverse findings?

In accordance with Ch. 65D-30.003(9)(a)3., F.A.C., providers must attain at least 80 percent compliance overall on each component reviewed. If any component within a facility falls below 80 percent compliance, an interim license is issued for that component and the provider must submit a plan for corrective action. More often than not, a provider is required to submit a plan for corrective action.

c. In the event that there is a citation or adverse finding, what happens? Does the facility receive some form of a sanction, a fine, a more thorough review, a corrective action plan, a referral, loss of licensure or certification, or being forced to shut down, etc.?

Yes. As previously stated, if any component within a facility falls below 80 percent compliance, an interim license is issued and the provider must submit a plan for corrective action. In addition, there may be instances where a component is rated at an 80 percent level of compliance overall, but is in substantial noncompliance with standards related to health, safety, and welfare of clients and staff. This would include significant or chronic violations regarding standards that do not involve direct services to clients. The Department has the authority to issue an interim license or take other regulatory action if it determines that a licensed service provider is not in compliance with all statutory and regulatory requirements. With the recent passage of HB 807, the Department's authority to increase licensure standards and take action against a service provider for violations, including issuing fines, and impose sanctions (denial, suspension, revocation or moratorium) was strengthened. For example, operating without a license is now a felony of the third degree. The Department is in the process of rulemaking to implement these new provisions.

7. How many staff within your department are dedicated to overseeing and regulating drug treatment facilities?

Regional Department offices are responsible for licensing providers within their geographic boundaries. Currently, there are 25 full-time equivalent (FTE) licensure specialist positions, including supervisors, and 10.5 Other Personal Service (OPS) employees. Only four FTE statewide are dedicated to spending 100 percent of their time on licensure, while the remaining staff have additional duties.

8. Has your department examined the problem of patient brokering? If so, please discuss your findings or observations.

Yes. Over the past few years the Department has been informed of recovery residences and treatment providers – mainly in the southeast region of the state – participating in patient brokering activities. The Department is statutorily responsible for licensure of substance abuse services, and investigates complaints for compliance with all appropriate rules and regulations. As a result, criminal or civil allegations are referred to the appropriate enforcement agencies. Florida law establishes patient brokering as a criminal offense, and section 817.505(5), F.S., directs the Attorney General or State Attorney to prosecute patient brokering offenses.

During the 2015 Legislative session, due primarily to the crimes by recovery residences and licensed providers in Palm Beach County, the legislature passed HB 21 that required the Department to approve at least one credentialing entity for the purpose of developing and administering a voluntary certification program for recovery residences and recovery residence administrators. In addition, it limited patient referrals by licensed providers to certified recovery residences or to a licensed service provider's wholly owned subsidiary.

During the 2016 legislative session. A task force was funded and convened through the Fifteenth Judicial Circuit (Palm Beach) State Attorney Dave Aronberg. The Palm Beach County Sober Home Task Force included local elected officials, treatment providers, certifying entities, first responders, provider associations, health care attorneys, and the Department. The Palm Beach County Sober Home Task Force analyzed the problem of fraud and abuse in Florida's addiction treatment industry, and published a report making recommendations for improvements. The report identified that the main criminal and regulatory violations occurring in the industry involved deceptive marketing, insurance fraud, and patient brokering and made recommendations to the legislature. In addition, presentations were made to Senate and House committees by State Attorney Aronberg and the Department's Assistant Secretary for Substance Abuse and Mental Health John Bryant, who made further recommendations for regulatory changes in licensure requirements. As a result of the recommendations, House Bill 807 was drafted.

House Bill 807 passed during the 2017 legislative session. The bill expanded prohibitions on referrals between licensed treatment providers and recovery residences that do not obtain certification, created a tiered violation structure for licensure infringements, and strengthened licensure requirements. In addition, the bill created monetary penalties and additional degrees of felony offenses for patient brokering, and it required entities that provide substance abuse marketing services to be licensed annually by Florida Department of Agriculture and Consumer Services.

- a. Has your state ever received reports or complaints of a treatment facility or sober living home in your state that is suspected of participating in patient brokering? If so, how are these complaints handled?**

Yes. The Department refers all complaints that are beyond the scope of authority to appropriate law enforcement agencies.

- b. Has your department taken any steps to combat patient brokers and the treatment facilities or sober living homes that are utilizing patient brokers? If so, please describe this work.**

Yes. As stated in response 8, Florida law establishes patient brokering as a criminal felony offense, and section 817.505(5), F.S., directs the Attorney General or State Attorney to prosecute patient brokering offenses. In 2014, the Department sent letters to licensed substance abuse providers reminding them of patient brokering laws. Currently, the Department's Southeast Region office works closely with the Fifteenth Judicial Circuit State Attorney Sober Home Task Force on both legislative remedies and on law enforcement responses such as emergency suspension orders for licensed providers whose owners are arrested for patient brokering. Additional information about response to patient brokering is included in the response to question eleven.

- c. Has your state ever conducted an inspection or review of a facility in your state that was found to be giving or receiving financial kick-backs with an individual, sober living home, another treatment facility, or a laboratory?**

No. The Department has not discovered a provider participating in patient brokering activities while conducting a licensure inspection.

- i. If so, how many facilities have been found to be participating in a kick-back scheme?**

The Department is made aware of patient brokering arrests of providers by the Sober Home Task Force

- ii. What role does your department play if there is such a finding?**

In addition to the response in 8.b., the Department works in collaboration with federal and other state or local authorities, as appropriate when issues fall outside the Department's purview.

- 9. Has your state ever received reports or complaints of a treatment facility or sober living home in your state that is suspected of providing drugs to patients upon release so that the patient will relapse and have to re-enter treatment?**

No. The Department is not aware of any formal complaints however, is aware of allegations of this behavior in the media.

- 10. Does your state have any laws and regulations to combat patient brokering? If so, what are they?**

Yes. Please see response to question 8.

- a. Does the enforcement of any of those laws or regulations fall within your department jurisdiction?**

Yes, if the violation relates to activity related to licensure standards. HB 807 expanded on referrals between licensed treatment providers and recovery residences that do not obtain certification and requiring a referral log. In addition, after June 30, 2019, a licensed service provider violating this section will be subject to an administrative fine of \$1,000 per occurrence. Repeat violations may subject a provider to license suspension or revocation pursuant to s. 397.415, F.S.

- b. Has your department collaborated with any federal or state partners to combat this issue? If so, please elaborate.**

Please see response to question 8.

- 11. Have any drug treatment facilities or sober living homes within your state been shut down because they were found to be participating in patient brokering? If so, how many and when?**

Yes. As of late 2016 the Fifteenth Judicial Circuit State Attorney, as part of the response to the Task Force Report, began directing the issuance of arrest orders to owners of licensed treatment facilities for patient brokering. The arrest of facility management staff generates concern for patient safety and welfare so emergency license suspension orders were issued by the Department to those providers. As a result, some providers have voluntarily

surrendered their licenses and voluntarily let their license expire. As of December 2016, the Department has issued four emergency suspension orders, had five licenses voluntarily surrendered, and one license lapsed due to arrest of the provider's management staff.

12. Does your department regulate call centers that refer individuals seeking treatment to treatment centers? If so, please explain. If not, who in your state is responsible for regulating the call centers?

No. The Florida Telemarketing Act requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services before operating in Florida. Section 501.605, F.S. details the requirements of commercial substance abuse marketing services.

a. Are there requirements for those who work at these call centers to have certification or training to ensure that they are qualified to help individuals who are seeking assistance in deciding which treatment facility is most appropriate for them?

No. It appears that other than criminal background checks, there are no other requirements for these commercial entities. Please see response to question 12 for additional detail.

13. Does your department oversee or regulate sober living homes?

No. The Department has no statutory authority to regulate recovery residences and certification through a credentialing entity is currently voluntary. As directed by s.397.487 and s.397.4871, Florida Statutes, the Department approved the Florida Certification Board as the credentialing entity to certify recovery residence administrators, and the Florida Association of Recovery Residences as the credentialing entity for certifying recovery residences. Licensed substance abuse treatment providers may only refer individuals to a recovery residence if the recovery residence holds a valid certificate of compliance as provided in s. 397.487 F.S. and is actively managed by a certified recovery residence administrator as provided in s. 397.4871.

a. If not, who in your state is responsible for regulating sober living homes?

Currently, recovery residences are not regulated in Florida.

b. Does your state coordinate with them given the relationship that they may have, whether it's a formal or informal relationship, with treatment facilities?

The Department collaborates with the Florida Association of Recovery Residences on policies and projects including a Statewide Steering Committee for Recovery Oriented Systems of Care, and are part of the Sober Home Task Force.

14. In bipartisan staff discussions with various stakeholders, we have learned that some state and local courts require certain drug offenders to reside in a sober living home as a condition of their release. Are you aware of any requirements, similar to this, within your state?

No. We are not aware of courts imposing this requirement.

a. If so, is there a requirement that these drug offenders reside in accredited sober living homes?

Not applicable.